

2018 IL App (1st) 153459-U

No. 1-15-3459

Order filed February 22, 2018

Fourth Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 23444
	)	
DARIUS REDD,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices McBride and Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the judgment of the circuit court denying defendant's motion to quash arrest and suppress evidence where the police officers had reasonable suspicion to stop defendant's vehicle based on the description of the offenders and vehicle provided in a flash message and a show-up identification was not unduly suggestive.

¶ 2 Following a bench trial, defendant Darius Redd was found guilty of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2012)) and sentenced to 25 years' imprisonment. On appeal, defendant does not challenge the sufficiency of the evidence supporting his conviction.

Rather, he argues the trial court erred in failing to grant his motion to quash arrest where the police officers lacked reasonable suspicion to stop the automobile he was traveling in. He further argues a show-up identification should have been suppressed because it was unduly suggestive. We affirm.

¶ 3 Defendant was charged by information with one count of armed robbery, one count of unlawful use of a weapon by a felon, two counts of aggravated unlawful use of a weapon, and one count of aggravated unlawful restraint stemming from the armed robbery of 14-year-old Willie Hardaway occurring on November 29, 2013, in Chicago.<sup>1</sup> Prior to trial, defendant filed a motion to quash arrest and suppress evidence as well as a motion to suppress the show-up identification, arguing the officers did not have reasonable suspicion to stop the vehicle defendant was traveling in and the show-up identification performed was unduly suggestive.

¶ 4 The trial court held a hearing on both the motion to quash arrest and suppress evidence as well as the motion to suppress the show-up identification.<sup>2</sup> At the suppression hearing, Chicago police officers Nestor Perez and Walter Bucki described the circumstances of defendant's arrest and identification.

¶ 5 In response to the report of an armed robbery, Officer Perez went to Hardaway's residence with Officer McClentie around 10 p.m. on November 29, 2013. Hardaway said that there were two offenders armed with a handgun who had taken a cell phone and backpack from him at around 9:46 p.m. The offender carrying the gun was a black man wearing a brown jacket with a hoodie. The other offender was wearing a blue jacket with a hoodie. Later, Hardaway

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<sup>1</sup> Codefendants Cornell Bryant and Early Ware were also charged with armed robbery and aggravated unlawful restraint. Bryant's appeal is pending before this court. See *People v. Bryant*, No. 1-15-3458.

<sup>2</sup> Codefendant Bryant joined in both of these motions.

explained there were two people, in addition to defendant and codefendant Bryant, present inside the gray Pontiac that had parked on the street and from which defendant had exited just before the robbery occurred.

¶ 6 Officer Bucki was working with officers Thomas Paholke and Dave Madia, investigating the armed robbery of Hardaway. The officers received a radio call at 9:55 p.m. that the armed robbery involved two black men who fled in a gray Pontiac vehicle heading eastbound. A second call revealed that the first offender was 19 to 20 years' old, six-foot tall, weighing 150 to 180 pounds with a dark complexion and wearing a black jacket. The second offender was 17 to 18 years' old and wearing a blue jacket.

¶ 7 The officers stopped a gray 2004 Pontiac around 10 p.m. in the 1400 block of West 81st Street, which was about three and a half miles northwest from where the armed robbery had occurred, to investigate the possibility of the occupants' involvement in the armed robbery. The vehicle was not observed breaking any laws, and there were no search or arrest warrants for the occupants. While approaching the Pontiac, Bucki observed four people inside the vehicle including two people matching the description from the radio call. One of the individuals, identified as defendant, was wearing a brown jacket, and the other individual, identified as codefendant Bryant, was wearing a blue hoodie. The officers asked all four occupants to step out of the vehicle and detained them. Officer Paholke told Bucki that he had observed the front-seat passenger, defendant, make some kind of movement when the officers approached the vehicle following the stop. Paholke also told Bucki that defendant was holding a cell phone.

¶ 8 Bucki never saw defendant holding a gun but recovered a loaded firearm from the floorboard of the front, passenger's side of the car. A cell phone was later recovered from on top

of the center console of the vehicle. This phone was not removed from the vehicle until Hardaway arrived on the scene.

¶ 9 The officers requested, through the dispatcher, that Hardaway be brought to the area of the traffic stop. Perez and Hardaway arrived about 15 to 20 minutes after the Pontiac was stopped. The officers explained to Perez that they performed a traffic stop based on the flash message issued regarding the armed robbery and that there were four possible offenders detained. These individuals matched the description from the flash message.

¶ 10 Hardaway was inside the police vehicle alone when the show-up took place, which was between 5 and 20 feet from the suspects. The occupants of the Pontiac stood side-by-side, handcuffed together, in front of the police vehicle containing Hardaway. Bucki stood next to them. A spotlight was then shined on each occupant's face "systematically." Bucki testified that two officers were also present with Hardaway in the police vehicle. After each individual was illuminated, Perez walked to the vehicle and asked Hardaway if he recognized the particular individual.

¶ 11 Hardaway positively identified defendant as the man in the brown coat holding the gun during the robbery and codefendant Bryant as the man in the blue jacket who went through his pockets. He also identified the vehicle that the individuals were in and his cell phone recovered from that vehicle. All four individuals were arrested and taken to the police station.

¶ 12 The trial court denied defendant's motion to quash arrest and suppress evidence as well as the motion to suppress the show-up identification. The court found that while the description of the offenders was not very detailed, the officers have to rely on the information they received, which indicated that a silver or gray vehicle containing four people was involved in a robbery.

The court further noted that the information indicated one offender had a blue jacket and another had either a black or brown jacket, along with general height and weight descriptions of the offenders. The court found in the totality of the circumstances the officers had reasonable suspicion to stop the vehicle and conduct an investigative detention. Further, there were concerns of officer safety because they were investigating a robbery with a hand gun that had been committed. Additionally, Officer Bucki saw the gun in plain view after one of his partners saw defendant making “furtive movements.”

¶ 13 The court found the show-up identification was proper because the robbery was recent, the offenders were stopped, and the victim was available to be brought to the scene. Further, of the two offenders Hardaway identified, he was able to describe the role each played in the armed robbery. Accordingly, the trial court denied defendant’s motion to suppress the identification.

¶ 14 At trial, Hardaway testified that, around 9:46 p.m., he had just finished playing basketball and began walking home. It was dark outside, but street lights were on and illuminating the street. As he was walking in the area of 600 East 85th Street, a silver Pontiac slowly drove towards him. The Pontiac made a right turn and parked. A black man wearing a brown coat got out, put his hand in his pocket, and “skipped” towards Hardaway. The man, identified in court as defendant, told Hardaway to stop. Defendant approached Hardaway and pulled out a gun having a silver barrel and a wooden “bottom” and asked Hardaway what was inside his pockets. Hardaway could see defendant’s face from his eyebrows to his chin. At this point, Hardaway noticed codefendant in a blue coat and wearing a skull cap on the sidewalk.

¶ 15 Defendant reached into Hardaway’s left pocket and pulled out chapstick. Defendant then put the chapstick back and said to codefendant, “what you doing? Come on, I got the joint.”

Codefendant then walked up, reached into Hardaway's right pocket, and removed a black Kyocera phone. Defendant raised the gun, which was aimed at Hardaway's leg, and said, "I want the book bag, too." Defendant then took the book bag, which contained white shoes, a piece to Hardaway's tuba, and his state identification card. Defendant and codefendant returned together to the silver Pontiac. Defendant got back into the front passenger's seat, and codefendant got into the back passenger's seat, behind defendant. The car drove away heading north. Hardaway ran home and told his grandfather what had happened. His grandfather called the police, who arrived at the house. Hardaway then made a report with the police.

¶ 16 Hardaway rode with the officers in a police squad car and agreed to try and identify anyone the police had in custody. At the scene, the four suspects were lined up two to three inches apart. Hardaway was inside the police vehicle alone when the show-up took place. During the identification, Hardaway was able to see defendant's and codefendant's faces. Hardaway believed one other individual was the person driving the Pontiac based on his glasses. However, he did not see his face and did not make an identification. Hardaway further testified he was told where each suspect was sitting in the Pontiac. Hardaway identified the vehicle that the individuals were in and his phone based upon the screen saver, which displayed a picture of himself.

¶ 17 Chicago police officer Thomas Paholke testified at trial that he was working with Officers Bucki and Madia in the vicinity of 81st Street and Loomis Boulevard. Paholke heard a flash message which described a gray Pontiac with one offender wearing a brown jacket and another offender wearing a blue jacket. Consistent with the flash message he had heard, Paholke observed a gray Pontiac, which was about three miles from where the robbery took place. The

Pontiac contained four black men. Bucki, who was driving the police squad car, pulled the Pontiac over around 10:17 p.m. The officers then performed an investigatory stop. Paholke approached the front passenger's side while Madia watched the rear passenger. Bucki approached the driver's side of the Pontiac.

¶ 18 As Paholke approached, he observed the man in the front passenger's seat, identified in court as defendant, making "hand" and "shoulder movements." Defendant was "shrugging his shoulders downwards" when Paholke asked to see his hands. Paholke then observed a cell phone in defendant's left hand and ordered defendant to put it down. Defendant placed the phone on the center console and followed Paholke's orders to exit the vehicle. Paholke performed a protective pat down of defendant and walked him to the rear of the vehicle. The remaining occupants were also detained.

¶ 19 After Paholke told Bucki that he observed defendant "making a lot of movement," Bucki recovered a loaded, silver revolver from the front passenger's side floor board. The cell phone defendant was handling was also recovered from the vehicle. The officers called for Hardaway to be brought to the scene in order to identify the offenders. During the identification, Hardaway sat in a police vehicle while the officers shined a light on all four of the occupants. Hardaway positively identified defendant and codefendant Bryant.

¶ 20 Bucki testified consistently with his testimony at the suppression hearing regarding the events of November 29, 2013. He reiterated that, after pulling the Pontiac over, he observed four individuals in the car. Consistent with the flash message, the front passenger, defendant, was wearing a brown coat and a rear passenger, codefendant, was wearing a blue hoodie. After speaking with Paholke, Bucki recovered a loaded, nickel-plated revolver from the floorboard of

the front passenger's side. He further recovered a cell phone from the center console of the Pontiac.

¶ 21 The officers performed a show-up identification, which had the four suspects handcuffed together. Hardaway, who arrived at the scene, was about 10 feet away in a police vehicle and identified defendant as the man who pointed the gun at him and codefendant as the man who took his phone. Hardaway identified the cell phone from the console as his own.

¶ 22 After the State rested, defendant renewed his motions to quash the arrest and to suppress the show-up identification. The trial court denied the motions, reasoning that, based on the evidence presented, the officers had the right to pull over the Pontiac. Specifically, the court found that because of recency of the crime it believed the officers had the responsibility to investigate whether or not the individuals were involved. It found, "there is sufficient justification for stopping the car, for holding defendants, and at the point in time when the victim arrives upon the positive identification there is probable cause to arrest [defendant]." The court further found that the show-up performed was not "unduly suggestive and conducive to irreparable misidentification."

¶ 23 The trial court found defendant guilty of armed robbery and aggravated unlawful restraint. Defendant filed a motion for a new trial arguing, *inter alia*, that the trial court erred in denying his motion to quash arrest and suppress identification where the police lacked probable cause and the identification was unduly suggestive. The trial court denied the motion and sentenced defendant to 25 years' imprisonment. Defendant filed a timely notice of appeal.

¶ 24 On appeal, defendant argues the trial court erred in denying his motions to quash arrest and to suppress the identification. Specifically, he argues the officers lacked probable cause or



reasonable articulable suspicion to pull over the Pontiac. Further, he argues the officers conducted an unduly suggestive show-up identification. For these reasons, he asks this court to reverse his convictions outright or remand for a new trial.

¶ 25 When reviewing a ruling on a motion to suppress, we give deference to the trial court's findings of fact and will only reverse if they are against the manifest weight of the evidence. *People v. Burns*, 2016 IL 118973, ¶ 15. We review the ultimate legal issue of whether the trial court should have granted the motion to quash arrest and suppress evidence de novo. *Id.* ¶ 16. We may consider the testimony presented at trial as well as the testimony at the suppression hearing when reviewing the trial court's ruling on a motion to suppress. *People v. Slater*, 228 Ill. 2d 137, 149 (2008).

¶ 26 The fourth amendment to the United States Constitution provides the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const., amend. IV. When a police officer stops a vehicle and detains its passengers, a "seizure" within the meaning of the fourth amendment has occurred. *People v. Timmsen*, 2016 IL 118181, ¶ 9. "Therefore, a vehicle stop is subject to the fourth amendment requirement of reasonableness in all the circumstances." *People v. Jones*, 215 Ill. 2d 261, 270 (2005).

¶ 27 Courts analyze the reasonableness of traffic stops pursuant to the principles set forth in the United States Supreme Court case of *Terry v. Ohio*, 392 U.S. 1 (1968). *Jones*, 215 Ill. 2d at 270. Under *Terry*, "a police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to, commit a crime." *Timmsen*, 2016 IL 118181, ¶ 9. In order to justify a stop, "the officer must point to specific,

articulable facts which, when considered with natural inferences, make the intrusion reasonable.”

*People v. Simpson*, 2015 IL App (1st) 130303, ¶ 23.

¶ 28 Under this reasonable suspicion standard, the facts necessary to justify a *Terry* stop do not need to rise to the level of probable cause and can be satisfied even if no violation of the law is observed but must go beyond a mere hunch. *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 46. An officer’s decision to conduct a *Terry* stop is a practical one based on the totality of the circumstances. *In re Elijah W.*, 2017 IL App (1st) 162648, ¶ 36. A reviewing court applies an objective standard to a police officer’s action when deciding “whether the facts available to the officer at the time of the incident would lead an individual of reasonable caution to believe that the action was appropriate.” *People v. Colyar*, 2013 IL 111835, ¶ 40.

¶ 29 Here, given the totality of the circumstances, the officers decision to stop the vehicle defendant was traveling in was proper under *Terry*. Officers Bucki and Paholke received a message at approximately 9:55 p.m. that an armed robbery had occurred in the area of 600 East 85th Street. The radio message further indicated that the robbery involved two black men who fled eastbound in a gray Pontiac. Bucki testified that he received another message indicating that the first offender was 19 to 20 years’ old, six-feet tall, weighing 150-180 pounds and wearing a black jacket. This message further indicated that the second offender was 17 to 18 years’ old wearing a blue jacket, and the offenders were armed with a handgun. Paholke testified that the message indicated that the gray Pontiac contained one offender wearing a brown jacket with the other offender wearing a blue jacket.

¶ 30 While on patrol around 10 p.m., Bucki observed the gray Pontiac matching the description provided in the message about three and a half miles from the scene of the robbery

and pulled it over. Bucki testified that two of the four occupants matched the description provided. When he pulled over the Pontiac, he did not see the suspects breaking any laws. Paholke testified the gray Pontiac was stopped at 10:17 p.m.

¶ 31 We find the facts known to the officers at the time the Pontiac was pulled over, “taken together with rational inferences from those facts,” would allow a person to be reasonable in the belief that the occupants of the vehicle were involved in the armed robbery of Hardaway. See *People v. Williams*, 2016 IL App (1st) 132615, ¶ 45. Here, Bucki and Paholke were informed of the color and make of the vehicle used in the armed robbery. They were also aware of the race and approximate ages of the suspects. They further knew one offender was wearing a brown coat and the other offender was wearing a blue coat, and that the offenders were armed with a handgun. Finally, the officers observed the Pontiac approximately 20 minutes after hearing the message and about 30 minutes after the robbery took place. Given these facts, the officers had reasonable suspicion to pull over the vehicle.

¶ 32 Defendant argues that the officers did not have reasonable suspicion to pull over the Pontiac because it was remote in time and distance from the location of the robbery. Specifically, defendant contends that, because the Pontiac was pulled over three and a half miles from the location of the robbery about 20 minutes later, a “general description” of the vehicle cannot support reasonable suspicion. We disagree. Here, the Pontiac being observed three and a half miles away from the scene of the robbery was consistent with the timeline presented by the officers. See *People v. Lawson*, 2015 IL App (1st) 120751, ¶ 34 (finding, where the defendant was stopped three and a half hours after a home invasion, the “lapse of time is not unreasonably removed in time from the crime because the police saw him flee the house on foot, believed he

was hiding in the completely residential area, and searched the area for over two hours \*\*\*”). Similarly here, given the time that had passed, the officer’s observation of a matching vehicle three and a half miles away and containing suspects matching the description of the offenders supports a finding of reasonable suspicion.

¶ 33 Further, the officers were armed with more information, specifically that the robbery involved two black men, one wearing a brown coat and the other wearing a blue coat, traveling in a gray Pontiac. While there were ultimately four people inside the Pontiac, two of the occupants matched the description provided in the message. Therefore, based on the totality of the circumstances, the information the officers possessed justified the *Terry* stop and was more than a mere hunch.

¶ 34 We find *United States v. Jones*, 998 F. 2d 883 (10th Cir. 1993), relied upon by defendant, to be distinguishable. In *Jones*, the defendant was arrested after police found drugs in the vehicle in which he was a passenger. *Jones*, 998 F. 2d at 884. Prior to the arrest, police were told by an apartment manager that a tenant had told him two African-American men had pounded hard on a neighbor’s door. *Id.* One man was holding a gun, but the two men left in a black Mercedes westbound. *Id.* Both men were wearing a lot of jewelry, and one man was wearing an expensive purple sweater. *Id.* The police later pulled over a black Mercedes containing the defendant, discovered drugs inside the vehicle, and arrested the defendant. *Id.* The district court denied the defendant’s motion to suppress the drugs as a result of an unconstitutional seizure. *Id.*

¶ 35 The court in *Jones* found that the evidence was “meager” where there was only some description of the clothing worn by two black men and the car did not have any distinguishing features. *Id.* at 884-85. Further, there were many aspects of the vehicle that suggested it was not

the car police were searching for. *Id.* at 885. Specifically, the court noted the police were looking for two armed men, but the car they intercepted contained a six or seven-year-old girl, was on a street that could only be reached from the disturbance by a circuitous route, and promptly parked in front of a grocery store. *Id.* The court further noted that the information came from an informant the police had no experience with and the activity described was not a crime in New Mexico. *Id.* at 886. Given the circumstances, it was “far-fetched” that the suspects had committed or were about to commit a crime, and the fact the officers found drugs in the car was “blind luck.” *Id.*

¶ 36 Here, as discussed, the totality of the circumstances established that the police had reasonable suspicion to pull over the gray Pontiac in which defendant was a passenger. Inside the Pontiac, police observed two black men matching the description provided by a reliable source, the victim. Contrary to *Jones*, there were no aspects of the Pontiac that suggested it was not the car the officers were looking for. Here, the Pontiac was observed shortly after the armed robbery had occurred containing suspects matching the description provided by Hardaway.

¶ 37 Defendant next contends that the trial court erred by denying his motion to suppress the identification based on the allegedly suggestive show-up. Show-ups near the scene of a crime have been found to be proper police procedure to determine whether a search for offenders should continue or end. *People v. Jones*, 2017 IL App (1st) 143766, ¶ 27. They are permissible when there is a need to determine “(1) whether a suspect is innocent and should be released immediately; and (2) whether the police should continue searching for a fleeing culprit while the trail is still fresh.” *People v. Rodriguez*, 387 Ill. App. 3d 812, 830 (2008). A show-up identification only implicates the due process clause “when the identification procedure was so

‘unnecessarily suggestive’ or ‘impermissibly suggestive’ that there exists ‘a very substantial likelihood of irreparable misidentification.’ ” *Jones*, 2017 IL App (1st) 143766, ¶ 27 (quoting *People v. Moore*, 266 Ill. App. 3d 791, 796-97 (1994)).

¶ 38 In determining whether an identification procedure complies with due process, the defendant must first prove that the identification was so unnecessarily suggestive and conducive to misidentification that due process was denied. *Jones*, 2017 IL App (1st) 143766, ¶ 28. This requires analyzing the suggestiveness of the identification and the need for the suggestive identification. *Id.* If he satisfies his burden that the identification was unduly suggestive, the burden shifts to the State “to demonstrate that, ‘under the totality of the circumstances, the identification \*\*\* is nonetheless reliable.’ ” *Id.* (quoting *Moore*, 266 Ill. App. 3d at 797).

¶ 39 Viewing the record, we find the show-up identification was not unduly suggestive. After the Pontiac had been pulled over and the occupants detained, officers brought Hardaway to the scene. All four individuals stood side-by-side, handcuffed together, in front of the police vehicle containing Hardaway. A spotlight was shined on each suspect “systematically.” Hardaway, from about 10 feet away, identified defendant as the man who pointed the gun and him and codefendant as the man who took his phone. He did not identify the two other individuals. Further, there is nothing in the record indicating the officers suggested to Hardaway whom he should identify. Accordingly, defendant has not met his burden of showing that the show-up was unduly suggestive.

¶ 40 Defendant argues that the show-up identification was suggestive because the officers showed Hardaway the cell phone prior to the show-up identification. Viewing the record, it is unclear whether Hardaway was shown the phone before or after the identification. Bucki testified

both at the suppression hearing and at trial that, following the identification, he showed Hardaway the cell phone. Hardaway then identified the cell phone as his own based, in part, on the screensaver, which was a picture of himself. Hardaway testified at the trial that he first identified his phone prior and then identified defendant and codefendant. However, even if Hardaway was shown the phone before the identification, we still find the show-up identification was not unduly suggestive. Hardaway was presented with four suspects and only identified two as being involved in the armed robbery. Specifically, he identified defendant as the man holding the gun and codefendant as the man who took the phone. Therefore, Hardaway based his identification on his observations during the robbery, not because he was shown his phone first.

¶ 41 Defendant next contends the show-up identification was suggestive because Hardaway was told where each occupant was seated in the Pontiac prior to the identification. However, there is no indication that Hardaway made the identification of defendant based on where he was seated in the Pontiac. As the trial court noted, Hardaway identified defendant as the man who pointed a gun at him and codefendant as the man who took his phone from his pocket. This identification was made shortly after viewing the suspects and there is nothing in the record to suggest that Hardaway was uncertain of defendant's identity. Further, Hardaway did not identify the other two men present in the show-up, despite indicating he believed that the driver was wearing glasses. Therefore, we conclude that Hardaway identified defendant based on his observation during the robbery rather than on any knowledge of where each suspect was sitting in the Pontiac.

¶ 42 Defendant also contends the show-up identification was unduly suggestive because the individuals were handcuffed together. We disagree as this court has previously held that a

suspect in handcuffs does not, by itself, make the show-up unduly suggestive. See *Jones*, 2017 IL App (1st) 143766, ¶ 33; *People v. Howard*, 376 Ill. App. 3d 322, 331-32 (2007) (show-up was not unduly suggestive where the suspect, in handcuffs, was surrounded by police, and witnesses had ample time to observe the suspect during the crime and identified him shortly after). Here, there is nothing in the record indicating Hardaway based his identification on the fact that the individuals were handcuffed.

¶ 43 Given that a prompt identification was necessary to inform the officers whether they needed to continue to search for armed and dangerous offenders, the officers were justified in conducting the show-up. The manner in which the show-up was performed was not unduly suggestive, and the trial court properly denied defendant's motion to suppress the identification.

¶ 44 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 45 Affirmed.